

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

BLUE SKIES ALLIANCE, *et al.*,

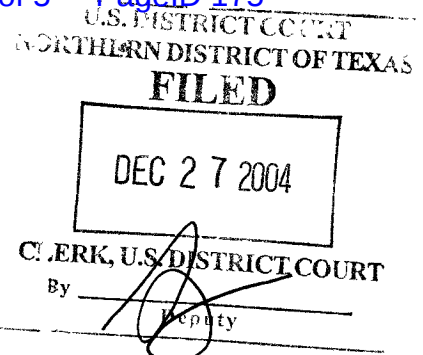
Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and MICHAEL
O. LEAVITT, Administrator of the United States
Environmental Protection Agency, *et al.*,

Defendants.

Civil Action No.
3:04CIV-2169-N



Pursuant to the Court's scheduling order of December 17, 2004, the parties submit the Joint Status Report as follows:

1. Nature of the case and contentions of the parties: Plaintiffs allege that the federal defendants (jointly referred to "EPA") have failed to perform two duties allegedly mandated by the Clean Air Act ("CAA"). First, plaintiffs allege that EPA failed to determine whether the Dallas - Ft. Worth air quality region ("Area") attained the National Ambient Air Quality Standard ("NAAQS") for ozone by the applicable attainment date, November 15, 1999; and to publish notice of its determination and proper classification for the Area in the Federal Register by May 15, 2000, pursuant to CAA section 181(b)(2), 42 U.S.C. § 7511(b)(2). Second, plaintiffs allege that EPA has failed to take final action to approve or disapprove, in whole or in part, the state implementation plans submitted by Texas for the Area within the time allowed for EPA to act by CAA section 110(k)(2), 42 U.S.C. § 7410(k)(2).

Plaintiffs request the Court to order EPA to complete these two duties immediately. EPA maintains that it is entitled to a reasonable time to complete these actions in order to comply with the procedural requirements of the CAA and the Administrative Procedure Act.

Defendant-intervenor, the Texas Commission on Environmental Quality ("TCEQ"), agrees that the EPA has not taken final action on the entirety of the two state implementation plan revisions submitted by Texas on October 25, 1999, and April 25, 2000, but the TCEQ asserts that EPA has taken final action on portions of these submittals including the motor

vehicle emissions budget contained in the DFW attainment plan and certain control measures contained in the plan submittals. The TCEQ supports EPA's position that, if EPA action is required, EPA is entitled to a reasonable time to complete such actions.

2. Pending and contemplated motions, including the possible joinder of other parties:

The parties are contemplating summary judgment motions. The parties do not plan on joining additional parties. The TCEQ anticipates additional intervenors.

3. Prospects for settlement and whether mediation might facilitate settlement:

The parties have been discussing settlement options. Plaintiffs believe that a qualified mediator experienced in this type of case could facilitate settlement, however, at this time plaintiffs do not see a need for formal mediation. EPA believes that continued negotiations could be fruitful, but that a mediator would not facilitate these discussions in this particular case. The TCEQ agrees with EPA.

4. Whether the attorneys in this case understand their responsibilities under – and

will conduct this litigation in according to – the standards of *Dondi*, 121 F.R.D. 284 (N.D. Tex. 1988) (en banc) and this Court's Civil Justice Expense & Delay Reduction Plan: The attorneys understand their responsibilities and will conduct the litigation accordingly.

5. Whether the parties will agree to the trial of this case before United States



Magistrate Judge Ramirez, under 28 U.S.C. 636(c) (1994): The parties do not agree to trial before the Magistrate Judge.

6. Whether there are requested modifications of the scheduling order:

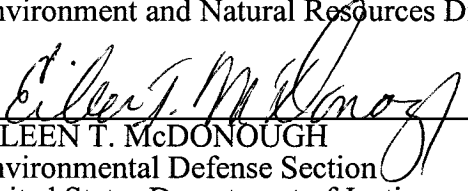
The parties are not now requesting any modifications to the schedule, but may do so in the future if appropriate to facilitate settlement.

7. Estimated length of trial: One day.

Respectfully submitted,


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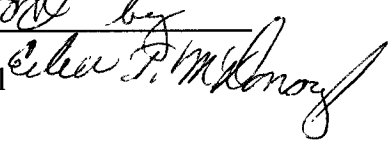
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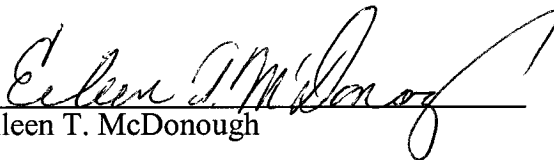
ATTORNEYS FOR THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by first-class mail, postage prepaid, on December 23, 2004, upon

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